

Commissioner for Patents United States Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450 www.uspto.gov

HEIMLICH LAW 5952 DIAL WAY SAN JOSE CA 95129 **MAILED**

SEP 17 2010

OFFICE OF PETITIONS

In re Application of

Shwartz

: DECISION ON

Application No. 09/759,728

: APPLICATION FOR

Filed: January 11, 2001 Patent Number: 7,631,349

: PATENT TERM ADJUSTMENT

Atty Docket No. DIGI-P001

This decision is in response to the January 13, 2010 "RENEWED REQUEST FOR REINSTATMENT OF APPLICATIONS FOR PATENT TERM ADJUSTMENT AND ADDITIONAL BASIS THEREFORE" and the "APPLICATION FOR PATENT TERM ADJUSTMENT". The Office is treating this petition as a request for reconsideration of patent term adjustment under 37 CFR 1.705(d). Applicant submits that the correct patent term adjustment to be indicated on the patent is one thousand four hundred and fifty-four (1454) or 1800 days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended is GRANTED to the extent herein indicated. However, the patent term adjustment is one thousand four hundred and eighty-one (1481) days, rather than the requested one thousand four hundred and fifty-four (1454) or eighteen hundred (1800) days

Applicant appears to request this correction on the basis that the application was filed in 2001 and it did not issue until 2009. In addition, applicant also asserts that the period of time between December 18, 2007 and November 5, 2008 is additional PTA.

The Office notes that applicants filed a PTA request on January 13, 2010. The request filed on January 19, 2010 is deemed supplemental and will not be considered.

The Office finds the following:

- 1) Applicant is entitled to 883 days of "A" time pursuant to 37 CFR 1.702(a) (1). The period began on 3/12/02 and ended on 8/10/2004.
- 2) Applicant is entitled to 266 days of "A" time pursuant to 37 CFR 1.702(a) (4). The period began on 3/18/09 and ended on 12/8/2009.
- 3) Applicant is entitled to 924 days of "B" delay pursuant to 37 CFR 1.702(b). The period began on 1/12/2004, the day after the 36 month date and ended on 7/23/2006, the day before the submission of the RCE.

The Office notes that the overlapping period between "A" delay and "B" delay per $\underline{\text{Wyeth}}$ is 212 days. The period of overlap between the "A" delays and "B" delays begins on 1/12/2004 and ends on 8/10/2004.

The Office notes that Applicant delay amounts to 380 days. Applicant on four occasions bought extensions of time and PTA was reduced pursuant to 37 CFR 1.704(b) by periods of 97, 91, 95, and 97 days.

Accordingly, the overall PTA at the time of the issuance of the patent is $1475 \ (883 + 266 + 924 - 212 - 380)$.

The Office notes that the period of from 12/18/2007 and 11/05/2008 is not additional PTA. The Office does not find that the period would be additional PTA pursuant to the statutory provision 35 USC 154(b) or its implementing regulations 37 CFR 1.702-1.705.

Moreover, the Office further notes that the period for "B" delay does not continue to the date of issuance of the patent if an RCE is filed in the application. Accordingly, the "B" delay would have stopped accumulating prior to applicants cited date of 20009.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The applicant is

giving one month or thirty (30) days whichever is longer as an opportunity to be heard on the grant of the certificate of correction. After the response period has elapsed, the Office will sua sponte issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one thousand four hundred and eighty-one days (1481 days).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Telephone inquiries specific to this matter should be directed to Maria Nuzzolillo, (571) 272-8150.

/Kery Fries/

Kery Fries
Senior Legal Advisor Attorney
Office of Patent Legal Administration
Office of Associate Commissioner
For Patent Examination Policy

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE

CERTIFICATE OF CORRECTION

PATENT

: 7,631,349 B2

DATED

: December 8, 2009

Draft

INVENTOR(S): Schwartz

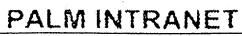
It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

Subject to any disclaimer, the term of this patent is extended or adjusted [*] Notice: under 35 USC 154(b) by (811) days

Delete the phrase "by 811 days" and insert - by 1481 days--

Day : Wednesday



Date: 9/15/2010 Time: 14:55:09

PTA Calculations for Application: <u>09/759728</u>					
Application Filing Date:	01/11/2001	PTO Delay (PTO):	1191		
Issue Date of Patent:	12/08/2009	Three Years:	0		
Pre-Issue Petitions:	0	Applicant Delay (APPL):	380		
Post-Issue Petitions:	0	Total PTA (days):	1481		
PTO Delay Adjustment:	670				

File Contents History					
Number	Date	Contents Description	PTO	APPL	START
90	09/15/2010	ADJUSTMENT OF PTA CALCULATION BY PTO	670		111
85.5	11/18/2009	PTA 36 MONTHS	42		
85	12/08/2009	PATENT ISSUE DATE USED IN PTA CALCULATION	266		74
84	11/11/2009	EXPORT TO FINAL DATA CAPTURE			
83	11/10/2009	DISPATCH TO FDC			
82	11/10/2009	EMAIL NOTIFICATION			
81	11/06/2009	MAIL-PETITION DECISION - DISMISSED			
80	11/05/2009	PETITION DECISION - DISMISSED			
79	08/12/2009	TC RETURN TO PUBS			
78	07/01/2009	PUBS CASE REMAND TO TC	·	-	
77	01/27/2009	DISPATCH TO FDC			
76	11/19/2008	APPLICATION IS CONSIDERED READY FOR ISSUE			
75	11/13/2008	PETITION ENTERED			
74	11/17/2008	ISSUE FEE PAYMENT VERIFIED			
73	11/17/2008	ISSUE FEE PAYMENT RECEIVED			
72	11/07/2008	ELECTRONIC REVIEW			
71	11/07/2008	EMAIL NOTIFICATION			
70	11/05/2008	MAIL CORRECTED NOTICE OF ALLOWANCE			
69	11/03/2008	CORRECTED NOTICE OF ALLOWANCE			
68	10/27/2008	MISCELLANEOUS INCOMING LETTER			
67	09/16/2008	MISCELLANEOUS INCOMING LETTER			
64	10/09/2008	CASE DOCKETED TO EXAMINER IN GAU			
61	02/08/2008	FINISHED INITIAL DATA CAPTURE			
60		EXPORT TO INITIAL DATA CAPTURE			
59	12/20/2007	ELECTRONIC REVIEW			

58	12/19/2007	EMAIL NOTIFICATION		
57		EMAIL NOTIFICATION		
56	!=====	MAIL NOTICE OF ALLOWANCE		
55		MAIL EXAMINER'S AMENDMENT		
54	12/14/2007	ISSUE REVISION COMPLETED		
53	12/14/2007	DOCUMENT VERIFICATION		
52	12/14/2007	NOTICE OF ALLOWANCE DATA VERIFICATION COMPLETED		
51	12/14/2007	CASE DOCKETED TO EXAMINER IN GAU		
50	12/10/2007	EXAMINER'S AMENDMENT COMMUNICATION		
49	12/10/2007	NOTICE OF ALLOWABILITY		
48		EXAMINER INTERVIEW SUMMARY RECORD (PTOL - 413)		
47	11/30/2007	ELECTRONIC REVIEW		
46	11/29/2007	EMAIL NOTIFICATION		
45	11/29/2007	MAIL NON-FINAL REJECTION		
44	11/26/2007	NON-FINAL REJECTION		
43	09/05/2007	APPEAL BRIEF REVIEW COMPLETE		
42	09/05/2007	DATE FORWARDED TO EXAMINER		
41	08/15/2007	APPEAL BRIEF FILED		
40	08/15/2007	REQUEST FOR EXTENSION OF TIME - GRANTED		
39 -	02/15/2007	NOTICE OF APPEAL FILED	97	37
38	02/15/2007	REQUEST FOR EXTENSION OF TIME - GRANTED		
37	08/10/2006	MAIL NON-FINAL REJECTION		
36	08/07/2006	NON-FINAL REJECTION		
35	07/31/2006	DATE FORWARDED TO EXAMINER		
34	07/24/2006	AMENDMENT SUBMITTED/ENTERED WITH FILING OF CPA/RCE		
33	07/31/2006	DATE FORWARDED TO EXAMINER		
32	07/24/2006	REQUEST FOR CONTINUED EXAMINATION (RCE)	91	28
31	07/31/2006	DISPOSAL FOR A RCE / CPA / R129		
30	07/24/2006	REQUEST FOR EXTENSION OF TIME - GRANTED		
29	07/24/2006	WORKFLOW - REQUEST FOR RCE - BEGIN		
28	01/24/2006	MAIL FINAL REJECTION (PTOL - 326)		
27	01/22/2006	FINAL REJECTION		
26	11/17/2005	DATE FORWARDED TO EXAMINER		
25	11/08/2005	RESPONSE AFTER NON-FINAL ACTION	95	_23

	0			1 11	
		REQUEST FOR EXTENSION OF TIME - GRANTED			
23		MAIL NON-FINAL REJECTION			
22	05/03/2005	NON-FINAL REJECTION			
21	02/23/2005	IFW TSS PROCESSING BY TECH CENTER COMPLETE			
20	10/01/2002	REFERENCE CAPTURE ON IDS			
19	02/12/2001	REFERENCE CAPTURE ON IDS			
18	02/23/2005	DATE FORWARDED TO EXAMINER			
17	02/15/2005	RESPONSE AFTER NON-FINAL ACTION		97	13
16	02/15/2005	REQUEST FOR EXTENSION OF TIME - GRANTED			
14	11/16/2004	CASE DOCKETED TO EXAMINER IN GAU			
13	08/10/2004	MAIL NON-FINAL REJECTION	883		-1
12	08/09/2004	NON-FINAL REJECTION	*		
11	07/28/2004	CORRESPONDENCE ADDRESS CHANGE			
10	06/22/2004	CASE DOCKETED TO EXAMINER IN GAU			
9	07/03/2003	CASE DOCKETED TO EXAMINER IN GAU			
8	03/20/2003	CORRESPONDENCE ADDRESS CHANGE			
7.7	10/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
7	10/01/2002	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
6	09/13/2002	CASE DOCKETED TO EXAMINER IN GAU			
5.7	02/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED			
5	02/12/2001	INFORMATION DISCLOSURE STATEMENT (IDS) FILED		-	
4	02/26/2001	APPLICATION DISPATCHED FROM OIPE			
3	02/22/2001	CORRESPONDENCE ADDRESS CHANGE			
2	01/30/2001	IFW SCAN & PACR AUTO SECURITY REVIEW			
1	01/11/2001	INITIAL EXAM TEAM NN			

Search Another: Application# Search

EXPLANATION OF PTA CALCULATION

EXPLANATION OF PTE CALCULATION

To go back, right click here and select Back. To go forward, right click here and select Forward. To refresh, right click here and select Refresh.

Back to OASIS | Home page